IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

WP(C).No. 1006 of 2006(T)

PETITIONER:

MR. ABDUL WAHAB, S/O. AHAMMED HAJI,
AGED 65 YEARS, RESIDING AT CHENNAMPALLY HOUSE,
ANTHIKAD, CHERANALLUR, ERNAKULAM.

BY ADV. SRI.P.A.ABDUL JABBAR

RESPONDENTS:
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1. THE DISTRICT COLLECTOR,
ERNAKULAM, COLLECTORATE, KAKKANADU.

2. THE SPECIAL TAHASILDAR (LAND ACQUISTION)
NATIONAL HIGHWAY NO.1, ERNAKULAM, KAKKANAD.

BY GOVERNMENT PLEADER SHRI L.G. SURESH BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE PATTAYAM NO.11/2003 ISSUED AS PER ORDER IN SMP NO.589/02 OF SEETTLEMENT OFFICER, KOTTAYAM.

EXHIBIT P2 TRUE COPY OF THE BASIC TAX RECEIPT ISSUED FROM THE VILLAGE OFFICER, CHERANALLUR.

EXHIBIT P3 TREU COPY OF THE NOTICE ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER ASKING HIM TO FILE CLAIM STATEMENT IN LAC NO.1/2002.

EXHIBIT P4 TRUE COPY OF THE AWARD NOTICE ISSUED TO THE PETITIONER BY THE SECOND RESPONDENT AS AWARD NO.207/2005.

EXHIBIT P5 TRUE COPY OF THE LAWYER NOICE ISSUED BY THE PETITIONER TO THE RESPONDENT.

EXHIBIT P6 TRUE COPY OF THE POSTAL ACKNOWLEDGMENT CARD SHOWING THE ACCEPTANCE OF EXHIBIT P6 BY THE RESPONDENTS.

RESPONDENTS' EXHIBITS: NIL

K. PADMANABHAN NAIR, J.

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W.P(C) NO. 1006 OF 2006.

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Dated this the 18th day of July, 2007

J U D G M E N T

Petitioner claims that he is the owner in possession of 7.28 Ares of land comprised in R.S. No.548/8 of Cheranallur Village. It is averred that he got the property under partition deed No.3705/1974 of Edappally Sub Registry Office along with other properties. It is also averred that petitioner had obtained Patta No.11/2003 issued as per the order in S.M.P. No.589/2002 of Settlement Officer, Kottayam and he is paying tax. It is further averred that an area of 0.0070 Hectares of land belonging to the petitioner which forms part of 7.28 Ares of land and an area of 0.0120 Hectares of land were acquired for the purpose of widening NH-17. According to the petitioner, he was not served with any notice of acquisition. He approached the second respondent and appraised him of the factual position. Second respondent promised him that notice will be issued to him and his claim will also be considered while passing the award. It is averred that on 4.8.2005 Land Acquisition Officer issued Exhibit P4 award

notice by which petitioner was awarded compensation for an area of 0.0120 Hectares of land. But no compensation was not awarded for an area of 0.0070 Hectares of land acquired from the possession of the petitioner. Hence this Writ Petition for a direction to the Land Acquisition Officer to award compensation to the petitioner in respect of the extent of 0.0070 Hectares of land also.

2. Land Acquisition Officer has filed a counter affidavit stating that the Thandaper holder of 7.28 Ares of land comprised in R.S. No.548/12 of Cheranallur Village is Edappally Vasudevan Ganapathy Rajavu as per T.P. No.2052 of Cheranallur Village and since nobody had produced documents of title, the matter was referred to the Sub Court, Ernakulam and the amount was deposited before the Court. It was further stated that the petitioner did not file any claim statement claiming compensation in respect of 0.0070 Hectares of land and produced any document. Hence no award was passed in his favour. It was also stated that the land in question was not in the possession and enjoyment of the petitioner.

3. All the contentions were denied by the petitioner. Learned counsel appearing for the petitioner has argued that after receipt of the copy of the counter affidavit, petitioner made enquiries with the reference court and it is revealed that reference was numbered as L.A.R. No.122 of 2006. It is also argued that the learned Sub Judge passed an order to return the reference along with the award, etc., back to the Land Acquisition Officer with a direction to furnish the correct name of the claimant, as there was nobody to accept the notice. It is submitted that the records are not yet actually returned. If records are not yet returned, the proper remedy available to the petitioner is to file a proper petition before the reference court to review the order passed by it and also get himself impleaded as a claimant in the LAR. If such an application is filed within one month from today, the learned Sub Judge shall consider the same and pass appropriate orders in accordance with law. If the petitioner is impleaded, he will be given a reasonable opportunity to adduce evidence also. Thereafter the learned Sub Judge shall dispose of the reference in accordance with law.

Writ Petition is disposed of in the above terms.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A.

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J U D G M E N T

6th JULY, 2007